



Mr Shane Workman
ArtisanOz Consulting
Capri U 403
1 The Piazza
WENTWORTH POINT NSW 2127

Shane@aoh.com.au

Dear Sir

**Application for the Grant of a Packaged Liquor Licence
Colo Heights Liquor Store**

I am writing to you about an application made by your client, Mr Claus Mahlenhoff, to the Independent Liquor and Gaming Authority on 28 July 2014, in respect of a proposed new packaged liquor licence for premises to be located at shop 5 3356 Putty Road, Colo Heights known as "Colo Heights Liquor Store".

Processing of the Application was delayed while the Authority awaited the provision of further information and evidence requested by Authority staff, which was not provided until the end of May 2015. Following preliminary consideration of the Application at the Authority meeting of 24 June 2015, and another round of submissions from the Applicant, the Authority decided at its meeting of 29 July 2015 to grant the Application pursuant to section 45 of the *Liquor Act 2007*.

Informal notice of the decision was provided to you in an email from Authority staff dated 4 August 2015.

Under section 36C of the *Gaming and Liquor Administration Act 2007*, the Authority is required to publish statements of reasons with respect to those types of decisions prescribed by clause 6 of the Gaming and Liquor Administration Regulation 2008. This letter attaches the statement of reasons for the Authority's decision. It has been prepared in the context of a high volume liquor jurisdiction that requires the publication of statements of reasons as soon as practicable.

The detailed conditions subject to which the licence is granted will be set out in the OneGov record of the liquor licence, to be provided separately by staff assisting the Authority.

If you have any questions, please contact the case manager, Ms Trudy Tafea, via email at trudy.tafea@ilga.nsw.gov.au.

Yours faithfully

Micheil Brodie
Chief Executive

26 NOV 2015

STATEMENT OF REASONS

INTRODUCTION

1. On 28 July 2014, the Independent Liquor and Gaming Authority (Authority) received an application (Application) made by Mr Claus Mahlenhoff (Applicant). The Application seeks the grant of a new packaged liquor licence, within the meaning of section 29 of the *Liquor Act 2007* (Act), for premises located at shop 5 3356 Putty Road, Colo Heights known as "Colo Heights Liquor Store" (Premises).
2. The Application proposes that the packaged liquor business be licensed to sell or supply liquor for consumption off the Premises during the trading hours of:

Monday to Sunday 10:00am to 8:00pm.
3. The Application seeks that the 6-hour daily closure period required by section 11A of the Act be fixed at between 4:00am and 10:00am.

MATERIAL BEFORE THE AUTHORITY

4. Application Form for Packaged Liquor Licence and Community Impact Statement (CIS) filed with the Authority on 28 July 2014: In the Application form, the Applicant notes that a packaged liquor licence was previously applied for during 2010 but that application was refused "due to the original site being within the same building as a petrol service station".
5. In support of the current Application, the Applicant submits that a Responsible Service of Alcohol (RSA) House Policy will be in place with respect to the Premises; that no customers "will be allowed to enter if intoxicated"; that no customers "will be served liquor if intoxicated"; that any intoxicated customers "will be removed immediately"; and that "ID will be checked by staff to ensure no person under the age of 18yrs is served liquor".
6. The Applicant submits that no entertainment will be supplied on the Premises and that the development consent is in force for the proposed use of the Premises by way of Development Application (DA) number 357/87.
7. The Applicant has proposed that the licensed trading hours be fixed between 10:00am to 8:00pm Monday through Sunday.
8. The various contentions and submissions made by the Applicant in the CIS document regarding the overall social impact of granting the Application are discussed in further detail below.
9. Responsible Service of Alcohol Certificate No. 615215: This certifies that the Applicant completed RSA training on 17 April 2010.
10. Westpac Bank Card, Medicare Card, Driver Licence, Institution of Automotive Mechanical Engineers Card and Richmond Club Card for the Applicant by way of proof of his identity.
11. Plan of the Premises: The first page of this two page document shows via a plan and a Google Earth street image the visual distance between the different entrances to the Café and Restaurant, the Service Station, the Australia Post Office and the proposed

licensed Premises on the Applicant's property. The first page also contains two photographs of the front and inside of the Premises, along with a plan of the licensed area shown in red.

12. The second page of the plan is a Google Earth aerial photograph of the proposed licensed Premises in relation to the nearby Service Station, Café and Restaurant and Australia Post Office.
13. Liquor Licence Support Letters: The OneGov record has received 256 signed declarations of support for granting the liquor licence at the Premises. These common form letters all contend that the "proposed licensed premises will be a valuable asset and enhance the service to the local community and surrounding areas" whilst also filling "a void within the local and greater community". The letters includes residents in Colo Heights, Singleton, Kurmond and Glenhaven.
14. Copies of stakeholder notices: notifying the Application to various stakeholders as required by the liquor legislation - including Police, Council and the site notice placed on the Premises.
15. ASIC current business name extracts: This two page document provides the business name details for "Colo Heights Liquor Store" as at 14 August 2013.
16. Letter from the Hon Ray Williams MP, State Member for Hawkesbury to the Applicant dated 26 November 2010: thanking the Applicant for sending a copy of the petition calling for the acceptance of a liquor trading licence application in Colo Heights. Mr Williams informs the Applicant *inter alia* that a letter has been sent to the Minister for Gaming and Racing, the then Hon Kevin Greene MP and that an attempt was made to table the copy of the petition in parliament but was unsuccessful as Parliament will only accept the original petition and not a faxed copy.
17. Submission from the Hon Ray Williams MP, State Member for Hawkesbury to the Authority dated 20 June 2014: Mr Williams notes that Colo Heights is "35 kilometres from the nearest liquor outlet in Wilberforce to the south, and 60 kilometres from the nearest outlet to the north". Mr Williams submits *inter alia* that he supports "the residents of Colo Heights and their request to have retail facilities in their local area, especially given the long distances people have to drive at present to purchase liquor".
18. Mr Williams acknowledges that a previous application made by the Applicant was refused but requests that consideration be given to this new Application. Mr Williams contends that the Applicant "is a responsible person who has lived and operated businesses in the area for over two decades and is simply trying to provide a service to his quite remote local area and maintain the viability of his business".
19. Letter from the Authority to the Hon Ray Williams MP dated 01 July 2014: The Authority informed Mr Williams that due process must be addressed with any liquor licence application but his representations have been duly noted and will be "incorporated into the final assessment" of the Application.
20. Submission from the Hon Louise Markus MP Federal Member for Macquarie to the Authority dated 27 March 2014: expressing her support for granting the Application. Ms Markus contends that she has known the Applicant "for many years" and recognises that "the Colo Heights community benefits greatly from his business and service". Louise Markus urges the Authority to consider the Application and contends that the Application would "be a valuable asset".

21. Submission from Department of Family and Community Services (FACS) dated 23 December 2014. FACS submit that they are unable to determine that this Application "would adversely affect the local community above and beyond the usual social impacts of increased alcohol consumption in a community and therefore have no legitimate grounds for concern".
22. Email submission from Mr Greg Miles, Building Coordinator, Hawkesbury City Council (Council) dated 12 August 2014: stating that the elected Councillors raised concern that the Application may be "contrary to section 31(2)" of the Act in respect of granting a packaged liquor licence at service station premises. Mr Miles contends that if the Authority disagrees with their interpretation of the Act, then "Council raises no objection to the issue of the Licence". Mr Miles also submits that development consent is in force for the use as a shop and a separate DA "is not required" for the "sale of alcohol from a shop".
23. Submission from Senior Constable Licensing Officer Rochelle Blue of the Hawkesbury Local Area Command (LAC) of NSW Police to the Authority dated 13 August 2014: signed and supported by M Clarke, Crime Coordinator of the Hawkesbury LAC and the Crime Manager of the Hawkesbury LCA on 18 August 2014. Police note that the location comprises a service station, restaurant and general store but that the licensed Premises will encompass "a new free standing building, separate from the general store and service station".
24. Police contend that the Premises is located "80kms from the nearest town centre, being Wilberforce"; that the Putty Road is a "well known black spot for serious and fatal motor vehicle collisions"; that the road is used on the weekends by a large volume of motorcyclists; and that it can take "emergency services up to one hour to attend any priority incident around that area".
25. Police submit that they have concerns under section 30 and 31 of the Act and request the following conditions be considered: that packaged liquor is "only to be sold from the new free standing building"; that the Premises is "not to be accessible to members of the public" unless at least one staff member is present within the licensed area; that the licensee must ensure that liquor sold from the Premises is not consumed on the property; that a sign stating "alcohol purchased from the premises is not to be consumed on the property" is to be displayed inside the licensed area and outside the shop; and that notices are displayed inside and outside the Premises that contain messages to customers deterring them from drink driving".
26. Police also request that a closed-circuit television (CCTV) system be maintained according to the following requirements *inter alia* that the CCTV system operates continuously for 24 hours; that the cameras cover all entrances and exits, adjacent footpaths and publicly accessible areas on the Premises; and that the licensee keep CCTV recordings for at least 30 days and provide recordings to Police within three days of any request.
27. Police contend that the Applicant has made no objections to their proposed conditions and that the Police have no objection to the Application being granted provided that their proposed conditions are imposed upon the licence.
28. Report to Authority dated 26 November 2014 from the Secretary of the (then) NSW Trade and Investment (Secretary) via the Compliance Division of OLGR: OLGR notes that the Premises "is a separate building next to an established general store and petrol station". OLGR note that the proposed trading hours are "Monday to Sunday 10:00am to 8:00pm".

29. OLGR acknowledges that Police and Council did not object to the Application. OLGR submit that their assessment did not identify any concerns and contend that granting this Application is "unlikely to cause any alcohol related harm".
30. OLGR does not object to the granting of this Application provided "the conditions proposed by the police form part of the venue's liquor licence".
31. OLGR assess the "business model" (a packaged liquor licence) as being of "low risk" noting that the purpose of the Premises is the "sale of packaged liquor in a retail environment". OLGR note that the Premises is located within a "free-standing building next to an established general store and petrol station"; that the nearest bottle shop is located "approximately 40km's away in Wilberforce" and that the consumption of liquor "cannot occur on the licensed Premises".
32. OLGR further notes *inter alia* that the radial density of the suburb of Colo Heights "is low compared with the State average"; that the NSW Bureau of Crime Statistics and Research (BOCSAR) data between July 2013 and June 2014 shows the rate of alcohol related assaults (domestic and non-domestic) that occurred in the Hawkesbury Local Government Area (LGA) per 100,000 population was 299 compared to the NSW state average of 330; and that the rate of alcohol related disorderly conduct offences was 20 per 100,000 persons compared to the NSW state average of 110.
33. OLGR submit that "this indicates that the Hawkesbury LGA does not appear to have a significant concentration of alcohol-related anti-social behaviour". OLGR note that these BOCSAR statistics were based on the Hawkesbury LGA rather than the suburb of Colo Heights as the BOCSAR website was unable to provide accurate suburb specific data for Colo Heights as a stand-alone suburb.
34. OLGR advise that a review of Compliance Branch records "did not disclose any adverse information" in respect of the Applicant. OLGR also acknowledges that the Applicant applied for a packaged liquor licence in 2010 that was rejected due to "the proposed licensed area being located within the service station".
35. Complying Development Application (DA) number DA357/87 by Council dated 18 August 1987: This document shows that Council approved "additions to service station".
36. Building Permit number 1394/97 by Council dated 20 May 1988: This document records that Council approved the erection of a service centre, restaurant and dwelling subject to 37 conditions.
37. Email from Authority Staff to the Applicant's representative Mr Shane Workman, ArtisanOz Consulting dated 5 February 2015 at 3:20pm: Authority Staff inform the Applicant that to finalise the Application the following is required: a signed copy of the attached Certificate of Advertising; a House Policy or Plan of Management; a copy of a National Police Certificate. Authority Staff inform the Applicant of section 31(2) of the Act and request the Applicant to provide a statement which explains how the licensed Premises is not attached to the service station. Authority Staff provide the Applicant with a copy of the submissions received from Police, OLGR and Council and invite the Applicant to provide comment.
38. Authority staff invite the Applicant's consent to the following four proposed standard conditions that:
 - a) for the purpose of section 11A of the Act, the 6-hour closure period will be between 4:00am to 10:00am

- b) the Premises "must not operate with greater overall level of social impact on the wellbeing of the local and broader community than what could be reasonably expected from the information contained" in the CIS, Application and other information submitted
 - c) the licensee or its representative "join and be an active participant in the local liquor accord"
 - d) the licence cannot operate until the Authority is satisfied with evidence that the "premises are complete and ready to trade".
39. Email from the Applicant's representative Shane Workman, ArtisanOz Consulting to Authority Staff dated 25 May 2015 at 3:46pm: in response to the email sent from Authority Staff dated 5 February 2015. The Applicant contends *inter alia*, that:
- a) the Premises is proposed to be contained within a new free standing building
 - b) this building does not share any adjoining walls with the existing nearby service station
 - c) access to the Premises can only be through the front entry
 - d) one cannot access the Premises through the service station
 - e) access to the Premises from the service station is an approximate 30 metre walk outside
 - f) all equipment including point of sale will be contained wholly within the Premises
 - g) alcohol sales will only occur within the licensed area of the Premises
 - h) the Premises is "independent and not related to the service station at all".
40. The Applicant submits that that all of the submissions received do not object to the Application being approved and that the Applicant has already previously agreed to the Police proposed conditions. The Applicant agrees to the four "standard" conditions proposed by Authority staff in their email dated 5 February 2015.
41. Police Certificate No. NCHRC-2015-21224 for the Applicant: This Certificate, issued 6 March 2015, records that Mr Claus Mahlenhoff has no disclosable court outcomes or outstanding matters within the records of police services in Australia.
42. Six full page photographs of the Premises: showing that the Premises is a free standing building that is not connected to the nearby service station. The first image shows distance from the Premises entrance, that is 30 metres walk in open air from the service station. The second and third images are close up photographs of the entrance to the Premises. The fourth and fifth photographs depict the inside of the Premises and point out where the liquor display area, liquor storage area and the service/sale counter will be located. The sixth image shows a close up of the service counter which will contain the point of sale equipment.
43. Plan of Management dated 24 May 2015: This 16-page document states that the Plan will help make the Premises, safe, efficient and a pleasant environment whilst ensuring the "quiet amenity of neighbouring properties is maintained at all times" during the operation of the Premises.
44. The Applicant contends that all staff will be required to be familiar with this Management Plan as part of their induction process. Two photographs are contained in this documents that depict the street view and location of the Premises.
45. The Plan outlines the details for a planned CCTV system which will cover the cahiers, service areas, customer areas and entrances. The system will include automated recording technology, longer video storage capacity and video motion detection. The Plan states that Management will "ensure the system is maintained in good working order" and the following conditions *inter alia* will be adhered to: that recordings will be

sufficient to enable the identity of an individual beyond a reasonable doubt; that all entrances and exits will be recorded; that camera views are not obstructed; and that recordings commence 1 hour prior to opening and at least 1 hour after closure. The Plan also outlines *inter alia* that images captured will be retained for 30 days; that upon request Police and OLGR will have access to the recordings captured; and that employees will be encouraged to "assist with passive surveillance".

46. The document includes a plan for responsible service of alcohol (RSA) which requires that all staff must complete an Authority approved RSA course and produce a certificate, interim certificate or NSW RSA Competency Card. The RSA *House Policy* contained within this document includes *inter alia* that:
 - a) intoxicated patrons will be denied service
 - b) intoxicated persons will be refused admission to the Premises
 - c) the business operating on the Premises will "support and actively promote initiatives to minimise drink driving"
 - d) patrons suspected to be under the age of 18 will be asked to provide proof of age documentation
 - e) ID must be provided when requested
 - f) signage will be implemented that re-enforces the need to not drink and drive
 - g) staff will seek to discourage patrons from driving if they appear to be over the limit.
47. The Plan of Management states that the Licensee will "join and be an active participant in the Liquor Accord which covers the Colo Heights area" and that the hours of operation for the licensed Premises are between 10:00am and 8:00pm Monday through Sunday.
48. The Plan of Management also discusses *inter alia* the Applicant's policies on ejection of patrons, safety and money handling, operational procedures, crime scene prevention and consultation and assessment.
49. Certificate of Advertising: signed by the Applicant on 01 April 2015 regarding notification of the Application to third parties required by the legislation.
50. Email from Authority Staff to the Applicant's representative Shane Workman, ArtisanOz Consulting dated 12 June 2015 at 11:16am: Authority Staff invite the Applicant to consent to a further condition that the "licensee must conduct the licence in accordance with its Plan of Management dated May 2015".
51. Email from the Applicant's representative Shane Workman, ArtisanOz Consulting to Authority Staff dated 12 June 2015 at 11:31am: in response to the email sent from Authority Staff dated 12 June 2015. The Applicant agrees to conduct the licence in accordance with its Plan of Management dated May 2015.
52. Email from Authority Staff to the Applicant's representative Shane Workman, ArtisanOz Consulting dated 30 June 2015 at 10:22am: Authority Staff inform the Applicant that the Authority considered the Application at its meeting on June 2015 and has deferred consideration until the Applicant provides:
 - a) sales figures over a three (3) year period for petrol, oil and other petroleum products and all other sales
 - b) a copy of the title arrangements and deposited plan and further submissions that address how the Application satisfies the requirements of section 31(3) of the Act. The Authority also requests the Applicant to consent to a condition that the petrol bowser that is opposite the Premises shall be removed.
53. Email from the Applicant's representative Shane Workman, ArtisanOz Consulting to Authority Staff dated 13 July 2015 at 1:22am: in response to the email sent from

Authority Staff dated 30 June 2015. In regard to section 31(3) of the Act and the definition of a general store, the Applicant contends *inter alia* that:

- a) the Premises "has no connection with any convenience store, mixed business shop, corner shop or milk bar"
 - b) the Premises is a "new free standing building" that will contain a "self-contained business with its sole purpose of running the liquor store"
 - c) the Premises is clearly defined by "brick walls all around"
 - d) the Premises has its own entrance and cash register
 - e) there is no general store facilities within the Premises.
54. In relation to the prohibition against licensing a business whose primary purpose is a service station within section 31(3) of the Act, the Applicant contends that:
- a) the proposed Premises "is not a service station"
 - b) there already exists a service station "within another building that is not physically connected" to the Premises
 - c) the Premises is "fully self-contained"
 - d) the Premises will be run under a new Pty Limited company that is created solely for the purpose of running the liquor business
 - e) "all sales will remain within this new Pty Limited company". The Applicant submits that there are no service station facilities within the proposed Premises.
55. In response to the definition of a take-away food shop within section 31(3) of the Act, the Applicant contends that there is no take-away food shop located within the Premises; there is already a take-away shop on the site within another building; and that the primary purpose of the proposed Premises is the "sale and supply of liquor".
56. With regard to the condition proposed by the Authority to remove the petrol bowser from opposite the proposed Premises the Applicant submits that the bowser in question is not a petrol bowser but an LPG bowser and contends that this "cannot be removed due to the Dangerous Goods Act".
57. The Applicant submits that the bowser was placed in its current position in order to be "a sufficient distance away from buildings" and the petrol bowser. The Applicant also contends that the "bowser is used to fill portable LPG gas bottles for all residents of Colo Heights and numerous surrounding suburbs" and cannot be moved closer to the petrol station "due to the inherent risk of explosion with petrol bowser".
58. Letter from the Applicant to the Applicant's representative Shane Workman, ArtisanOz Consulting dated 10 July 2015: This letter was attached to the email sent to Authority staff dated 13 July 2015 at 1:22am. In this letter the Applicant contends that the bowser is not a petrol bowser but an LPG bowser; that the bowser has to be "certain distances from all doorways and ignition points"; that it is used to "fill home gas bottles"; and that the installation of the bowser cost around \$118,000 and had to meet "all government regulations and local council permission".
59. The Applicant contends that there is now less traffic flow on the Putty Road due to "high insurance rates imposed on truck drivers" and that "the bypass road into Hunter Valley" is diverting traffic onto the M1.
60. The Applicant submits that the summary of information provided to the Authority as to the number of fuel litres sold includes household gas bottles - with the average sales of household gas bottles being 3,000 to 4,000 litres per week.

61. The Applicant submits that the figures for shop sales include CPA postal fees, 2S pharmacy medicines, restaurant sales including takeaway food, café sales, sub-newsagency sales, groceries and dairy products and produce sales such as horse feed.
62. The Applicant submits that the sales figures provided show that:
 - a) in 2013 shop sales represented 32.06% of the total sales and fuel totalled 67.94%
 - b) in 2014 shop sales represented 32.29% of the total sales and fuel totalled 67.71%
 - c) in 2015 shop sales represented 36.96% of the total sales and fuel totalled 63.04%.
63. Sales figures for 2013-2015: This four page documents compares the total sales from the businesses operating on the property comparing shop sales with fuel sales.
64. A copy of the title arrangements and Deposited Plan: for the location of the Premises.
65. Submission letter from the Hon Dominic Perrottet MP, State Member for Hawkesbury dated 23 June 2015: Mr Perrttet provides a letter in support of the Application noting that the Premises will now comprise a brand new freestanding building that is no longer connected to the service station; that the Colo Heights Community will "benefit greatly" from the Premises by reason that " the next closest liquor outlet is in Wilberforce which is 35 Kilometres away"; and that the Premises would "enhance the greater community and fill a role that no other business has".
66. A copy of the 22-page petition in support of the Application: This document provided by the Applicant contains 674 signatures from residents of Colo Heights and nearby suburbs in support of the Application. [The Authority notes that this petition relates to the *previous* application that was made by the Applicant and determined in 2010.]
67. Three photographs: showing the location of the LPG bowser in respect of the proposed Premises and the nearby service station.
68. A Copy of the Previous Application and correspondence: made by the Applicant in 2010.
69. BOCSAR Crime Maps based upon data from January 2014 to December 2014 detailing hotspots of offences for the location of the Premises: This data obtained from published BOCSAR sources shows the immediate location surrounding the Premises at shop 5/3356 Putty Road, Colo Heights, is not within any hotspots for incidents of *non-domestic assault, domestic assault and malicious damage to property*.
70. Authority liquor licence density data: Authority data indicates that the Hawkesbury (LGA) had a rate of 20.86 *packaged liquor licences* per 100,000 persons while the postcode 2756 (which encompasses Bligh Park, Cattai, Central Colo, Clarendon, Colo, Colo Heights, Cornwallis, Ebenezer, Freemans Reach, Glossodia, Leets Vale, Lower Portland, Maroota, Mcgraths Hill, Mellong, Mulgrave, Pitt Town, Sackville, Sackville North, Scheyville, South Maroota, South Windsor, Upper Colo, Wilberforce, Windsor, Windsor Downs) had a rate of 12.41 per 100,000 persons, both below the rate for packaged licences across NSW as a whole which is 32.85.
71. Authority licensing data also shows that postcode 2756 has having significantly lower rates of *club licences, full hotel licences, on premises licences and wholesaler licences* per 100,000 people compared to the NSW state average. The Hawkesbury LGA also has lower rates of *club licences, full hotel licences, limited licences and on premises licences* per 100,000 people compared to the NSW state average.
72. Authority licensing records indicating the addresses of other liquor licenced premises in the suburbs of South Windsor, Pitt Town, Windsor, Clarendon, Cattai, Mcgraths Hill,

Wilberforce, Ebenezer, Lower Portland, Colo Heights, Maroota, Colo, Mulgrave, Glossodia, Bligh Park, South Maroota, and Sackville North.

73. BOCSAR data on Crime by LGA and Alcohol Related Status for calendar year 2013. The rate of recorded *domestic violence related assault* incidents in which alcohol was flagged by reporting Police as a contributing factor across the Hawkesbury LGA was 122.6 per 100,000 persons, which is slightly below the NSW state average of 137.3 per 100,000 persons. The rate of *non-domestic violence related assault* incidents flagged by reporting Police as alcohol related in the Hawkesbury LGA for 2013 was 139.7, considerably lower than the rate for NSW of 181. The rate of *offensive behaviour* offences flagged by reporting Police as alcohol related in this LGA was 17.1 per 100,000 persons, which is well below the NSW rate of 116. The rate of *assault police* incidents flagged by reporting Police as alcohol related in this LGA was 10.9, again comfortably below the NSW rate of 22.6.
74. Socio Economic Index for Areas (SEIFA) data published by the Australian Bureau of Statistics (ABS): ABS data indicates that the state suburb of Colo Heights ranked in the third decile compared to other suburbs in New South Wales. Postcode 2756 which encompasses a number of neighbouring suburbs as well as Colo Heights fared considerably better, ranking in the seventh decile compared to other postcodes in New South Wales. The Hawkesbury LGA as a whole ranked in the eighth decile across the State of NSW on the Index of Relative Socio-Economic Advantage and Disadvantage (with a decile ranking of 10 being the most advantaged).

STATUTORY OBJECTS AND CONSIDERATIONS

75. Division 5 of the Act addresses packaged liquor licences and includes the following provisions:
- 29 Authorisation conferred by packaged liquor licence
- (1) *Retail sales* A packaged liquor licence authorises the licensee to sell liquor by retail in sealed containers on the licensed premises, for consumption away from the licensed premises only:
- (a) during the standard trading period or such other period as may be authorised by an extended trading authorisation, or
- (b) in the case of any Sunday that falls on 24 December—from 8 am (or such earlier time as may be authorised by an extended trading authorisation) to 10 pm on that day.
- (2) *No retail trading on restricted trading days* Despite subsection (1), a packaged liquor licence does not authorise the licensee to sell liquor by retail on a restricted trading day.
- (3) *Selling liquor by wholesale or to employees* A packaged liquor licence also authorises the licensee:
- (a) to sell liquor by wholesale, at any time on the licensed premises, to persons authorised to sell liquor (whether by wholesale or by retail), and
- (b) to sell or supply liquor, at any time on the licensed premises, to the employees of the licensee or of a related corporation of the licensee.
- (3A) An extended trading authorisation must not authorise the sale after 10 pm on any day of liquor for consumption away from the licensed premises.
- (4) *Tastings* A packaged liquor licence also authorises the licensee to sell or supply liquor, on the licensed premises and during the trading hours permitted by subsection (1), otherwise than in sealed containers to customers and intending customers for consumption while on the licensed premises, but only for the purposes of tasting.
- 30 *Liquor sales area required if bottle shop is part of another business activity*
- (1) If the primary purpose of the business carried out on the premises to which a packaged liquor licence relates is not the sale of liquor for consumption away from the licensed premises, liquor may only be sold under the licence in an area of the licensed premises ("the liquor sales area") that is adequately separated from those parts of the premises in which other activities are carried out.

- (2) *The principal activity carried out in any such liquor sales area must be the sale or supply of liquor for consumption away from the licensed premises.*

31 *Restrictions on granting packaged liquor licences*

- (1) *A packaged liquor licence must not be granted for premises that comprise a general store unless the Authority is satisfied that:*
- (a) *in the neighbourhood of the premises concerned, no other take-away liquor service is reasonably available to the public, and*
 - (b) *the grant of the licence would not encourage drink-driving or other liquor-related harm.*
- (2) *A packaged liquor licence must not be granted for premises comprising a service station or take-away food shop.*
- (3) *In this section:*
- "general store" means a convenience store, mixed business shop, corner shop or milk bar that has a retail floor area of not more than 240 square metres and that is used primarily for the retail sale of groceries or associated small items.*
- "service station" means premises that are used primarily for the fuelling of motor vehicles involving the sale by retail of petrol, oil or other petroleum products.*
- "take-away food shop" means premises that are used primarily for the preparation and sale of food for immediate consumption away from the premises (whether or not food is also consumed on the premises).*

76. The power to grant a new liquor licence is provided by section 45 of the Act, which states, relevantly:

45 *Decision of Authority in relation to licence applications*

- (1) *The Authority may, after considering an application for a licence and any submissions received by the Authority in relation to the application, grant the licence or refuse to grant the licence. The Authority may determine the application whether or not the Secretary has provided a report in relation to the application.*
- (2) *...*
- (3) *The Authority must not grant a licence unless the Authority is satisfied that:*
- (a) *the applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates, and*
 - (b) *practices will be in place at the licensed premises as soon as the licence is granted that ensure, as far as reasonably practicable, that liquor is sold, supplied or served responsibly on the premises and that all reasonable steps are taken to prevent intoxication on the premises, and that those practices will remain in place, and*
 - (c) *if development consent is required under the Environmental Planning and Assessment Act 1979 (or approval under Part 3A or Part 5.1 of that Act is required) to use the premises for the purposes of the business or activity to which the proposed licence relates – that development consent or approval is in force.*
- (4) *...*
- (5) *...*
- (5A) *Without limiting subsection (3)(a), in determining whether an applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates, the Authority is to consider whether the applicant:*
- (a) *is of good repute, having regard to character, honesty and integrity, and*
 - (b) *is competent to carry on that business or activity.*

77. Under section 48(5) of the Act, the Authority *must not* grant a licence, authorisation or approval of a kind prescribed by section 48(2) of the Act unless the Authority is satisfied, having regard to the CIS and any other matter the Authority is made aware of during the Application process, that the overall social impact of the licence, authorisation or approval in question being granted will not be detrimental to the local or broader community.

78. Section 48(5) of the Act states:

48 *Community impact*

(5) *The Authority must not grant a licence, authorisation or approval to which a relevant application relates unless the Authority is satisfied, after having regard to:*

- (a) *the community impact statement provided with the application, and*
- (b) *any other matter the Authority is made aware of during the application process (such as by way of reports or submissions),*

that the overall social impact of the licence, authorisation or approval being granted will not be detrimental to the well-being of the local or broader community.

79. An application for a packaged liquor licence is a type of licence prescribed by section 48(2).

80. In determining the Application, the Authority has also considered relevant provisions of the Act, including the objects and considerations that are prescribed by section 3, which states:

3 *Objects of Act*

(1) *The objects of this Act are as follows:*

- (a) *to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community.*
- (b) *to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality,*
- (c) *to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.*

(2) *In order to secure the objects of this Act, each person who exercises functions under this Act (including a licensee) is required to have due regard to the following:*

- (a) *the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),*
- (b) *the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,*
- (c) *the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.*

APPLICANT CASE ON SOCIAL IMPACT

81. The Applicant contends that "residents of the Colo Heights area must travel approx. 39kms (one way) to the nearest liquor store or hotel to buy packaged liquor to takeaway". The Applicant contends that these vast distances no doubt result in some individuals "consuming their liquor purchase prior to returning home, thus resulting in traffic accidents and drink driving offences".

82. The Applicant contends that the residents of Colo Heights are in support of a packaged liquor licence in their local area and that granting this Application would "reduce the amount of individuals who are forced to travel the approx 80km round trip to purchase liquor". The Applicant contends that "residents complain that they have to make an 80km round trip to the nearest bottleshop at Wilberforce in order to purchase alcohol for consumption at home".

83. The Applicant contends that the Premises will have "no negative impact on the local community" and instead the "impact to the local community will be quite positive" as a result of the Premises providing the local community with "a service they desperately want and need".

84. The Applicant contends that granting the Application will "reduce the incidents of traffic accidents" and drink driving offences as it "should reduce the need for people to travel such long distances to purchase liquor".
85. The Applicant contends that the purpose of the Application is to "sell liquor by physical retail store to members of the public".
86. The Applicant submits that the location of the Premises is "rural"; that a letterbox drop which contained the Notice of Intention was provided to all residents and businesses in the surrounding 100 metres of the Premises; that no special interest groups or individuals work or reside near the Premises; that NSW State Member for Hawkesbury Mr Ray Williams supports the Application; that Police support the Application subject to the conditions imposed; that in the last 6 months numerous meetings were held with the general public; that over 256 individual support letters from residents have been collected; that the notice of intention letterbox drop resulted in "numerous letters of support from local residents"; that Council supported the Application; and that any issues or concerns raised will be addressed and resolved by the licensee in a satisfactory manner.

REASONS

87. The Authority is satisfied, on the basis of the Application material before the Authority and the absence of any submissions to the contrary that, for the purposes of Section 40 of the Act, the Application has been validly made and minimum procedural requirements with regard to the Application, CIS and community consultation have been satisfied.
88. The Authority is satisfied, on the basis of the Application material, plans and conditions consented to by, the Applicant in further submissions that additional requirements as to packaged liquor businesses required by section 30 and 31 of the Act have also been satisfied.
89. The Authority is satisfied on the basis of the Plan of the Premises, the photograph's provided that depict the proposed Premises entrance, point of sale counter and distance from service station, the email from the Applicant's representative dated 25 May 2015, sales figures and an email from the Applicant's representative on 13 July 2015 that the area in which the licence covers is adequately separated from the service station. The Authority is satisfied on the basis of the images supplied by the Applicant that depict the service station being a detached separate building approximately 30 metres walk from the service station. The Authority also acknowledges that the Premises has its own separate entrance and point of sale, that the Premises will be run under a separate company name and that the Premises is surrounded by four brick walls making it a fully self-contained building that is separated from the service station.
90. The Authority is satisfied, for the purposes of section 45(3)(a) of the Act, that the Applicant is a fit and proper person to carry on the business of a packaged liquor licenced venue of the kind proposed in the Application material, in the basis of the National Police Check provided. The Authority notes the Applicant's ASIC Extract for the business name and is satisfied that no issues of concern were raised with regard to the Applicant company or its directors' probity following consultation with relevant law enforcement agencies including Police and OLGR.
91. The Authority is satisfied, for the purposes of section 45(3)(b) of the Act, that responsible service practices will be in place with the commencement of licensed trading, on the basis of the Applicant's *Plan of Management*. The Authority also noted the absence of any adverse submission in this regard from OLGR or Police.

92. The Authority is satisfied, for the purposes of section 45(3)(c) of the Act, that the required development consent is in place for the proposed use of the Premises, on the basis of the DA provided by the Applicant and the observations provided by Council's Building Coordinator, Mr Greg Miles on behalf of Council.

Overall Social Impact Test

93. The Authority is satisfied, for the purposes of section 48(5) of the Act, that the overall social impact of granting the Application will *not* be detrimental to the wellbeing of the local or broader community.
94. Applying the social impact test requires a degree of speculation, albeit speculation informed by the particular proposal and the prevailing circumstances in the relevant local or broader community.
95. For the purposes of the overall social impact test prescribed by section 48(5) of the Act, the Authority is satisfied that the local community comprises the state suburb of Colo Heights while the relevant broader community comprises the Hawkesbury LGA.

Positive benefits

96. The Authority is satisfied the Applicant has demonstrated that granting the licence will provide benefit to members of the local and broader community who wish to conveniently purchase packaged liquor within a relatively remote rural location.
97. The Authority accepts the Applicant has established that granting the Application will be consistent with the "expectations, needs and aspirations of the community" in respect of the local community of Colo Heights, being an object of section 3(1)(a). The Authority is satisfied on the basis that the Applicant distributed notifications within the 100metre radius and received 256 letters of support from local residents and the absence of any objections from local residents, Council or Police.
98. The Authority is satisfied a packaged liquor licence within this remote location would provide an opportunity to purchase liquor in a local community that has no current access to a bricks and mortar packaged liquor retailer. It will substantially enhance consumer convenience in the local community in respect of Colo Heights and also provide convenience for persons in neighbouring areas.
99. Noting the low density of liquor licences in the local or broader community the new business will make a substantial difference to the availability of retail liquor products to the local community and in this part of the broader community. In this sense the Authority is satisfied that the proposed new business will reasonably develop, in the public interest, the liquor industry that serves the local and broader community, for the purposes of section 3(1)(b) of the Act.
100. While takeaway liquor is available for sale from hotels and clubs, the Authority is satisfied that the Premises will provide customers wishing to purchase packaged liquor within the Colo Heights local community with an alternate option to the 80 kilometre round trip to the nearest stand-alone *packaged liquor licensed* venue that is located in Wilberforce.

Negative impacts

101. The Authority is satisfied that over time there will likely be some contribution from the liquor sold at the Premises to alcohol related crime, disturbance or adverse impact upon amenity from a minority of customers who abuse packaged liquor purchased from the

Premises. Given the remote location of the Premises, liquor consumed from the proposed new business also has the potential to contribute to drink driving by a minority of customers who may choose to consume liquor from the Premises before driving.

102. However, the following factors have been taken into account when assessing the contribution that the operation of this new business is likely to make to prevailing levels of alcohol related adverse social impact in the local or broader community.
103. First, the Authority's liquor licencing data establishes that licence density in the local and broader community is relatively low. That is, granting this Application will not contribute to an environment with a high prevailing density of liquor outlets, and contribute to the kind of adverse social impacts that are associated in the research (identified in Authority Guideline 6) with high density of packaged liquor outlets.
104. The Authority notes that license density for postcode 2756 has a significantly low rate of 12.41 per 100,000 persons for *packaged liquor licences* compared to the NSW state average of 32.85. The Authority acknowledges that this low rate is significant because postcode 2756 incorporates a large number of suburbs including Bligh Park, Cattai, Central Colo, Clarendon, Colo, Colo Heights, Cornwallis, Ebenezer, Freemans Reach, Glossodia, Leets Vale, Lower Portland, Maroota, Mcgraths Hill, Mellong, Mulgrave, Pitt Town, Sackville, Sackville North, Scheyville, South Maroota, South Windsor, Upper Colo, Wilberforce, Windsor and Windsor Downs. In addition to this, the postcode 2756 also has significantly lower rates of *club licences, full hotel licences, on premises licences and wholesaler licences* per 100,000 people compared to the NSW state average.
105. The Authority notes that the BOCSAR crime data does not provide a cause for concern as to the concentration of alcohol related crime in the local community because the Premises is located in an area that shows no hotspots for incidents of *non-domestic assault, domestic assault and incidents of malicious damage*.
106. The BOCSAR data on alcohol related crime before the Authority satisfies the Authority that the broader community of Hawkesbury is exposed to relatively low rates of alcohol related crime compared to NSW as a whole. The Authority notes the rate of *alcohol related domestic violence related assault* incidents across the Hawkesbury LGA was 122.6 per 100,000 persons, which is lower than the NSW state average of 137.3 per 100,000 persons. Alcohol related domestic violence data is of particular interest when assessing a packaged liquor application given that packaged liquor tends to be consumed in the home, where most domestic violence occurs. In addition to this the Authority also acknowledges that the rate of *non-domestic violence related assaults, offensive behaviour and assault police* are all significantly lower than the rates for NSW.
107. This BOCSAR data satisfies the Authority that the new business will be operating in what is currently a relatively benign environment in terms of the prevailing rates of alcohol related crime across the broader community. The submissions from Police raised no localised concerns about alcohol related crime in the area of the proposed Premises or in the local community of Colo Heights.
108. The Authority notes that the local community of Colo Heights is ranked within the third decile on the Index of Relative Socio-Economic Advantage and Disadvantage. The Authority also acknowledges in contrast that the Hawkesbury LGA is ranked within eighth decile. While the suburb of Colo Heights may be demonstrative of relative socio disadvantage that has not translated into adverse impacts with regard to localised crime. The broader community is relatively advantaged in socio economic terms.

109. The Authority notes that the scale of the licensed business. The licensed area of the Premises will constitute 115.43 square metres (calculated from the Plan of the Premises). This makes it moderate in size and comparable with the size as many other stand-alone packaged liquor stores. It is neither unusually small nor is it a large scale operation.
110. The licensed trading hours proposed are from 10:00am to 8:00pm Monday through Sunday. Although the trading hours are reasonably extensive, the business will not be selling liquor until later into the evening on weekends and at times that might make the business more attractive to "pre fuelling" or drink driving by patrons on their way to licensed venues or driving along these relatively remote roadways.
111. The Authority is satisfied that the Applicant has consented to a number of conditions proposed by Police above and beyond the minimum requirements of the legislation that will also operate to reduce or constrain the social impact that the Premises may otherwise have.
112. The Applicant has agreed to the Police conditions which include: that packaged liquor is "only to be sold from the new free standing building"; that the Premises is "not to be accessible to members of the public" unless at least one staff member is present within the licensed area; that the licensee must ensure that liquor sold from the Premises is not consumed on the property; that a sign stating "alcohol purchased from the premises is not to be consumed on the property" is to be displayed inside the licensed area and outside the shop; and that notices are displayed inside and outside the Premises that contain messages to customers deterring them from drink driving".
113. The Applicant has also agreed to conditions requiring that a closed-circuit television (CCTV) system be maintained according to the following requirements *inter alia* that the CCTV system operates continuously for 24 hours; that the cameras cover all entrances and exits, adjacent footpaths and publicly accessible areas on the Premises; and that the licensee keep CCTV recordings for at least 30 days and provide recordings to Police within 3 days of any request. The location of the business in relation to other businesses operating on this property may also provide a degree of surveillance in an otherwise relatively remote location.
114. The Authority is further satisfied that the Applicant has implemented comprehensive harm minimisation measures through its Plan of Management will be elevated above the status of a business policy to a mandatory, enforceable licence condition. The steps outlined in this document satisfy the Authority that the Applicant and all staff members will be adequately trained and will engage in steps that ensure the extent of adverse impact arising from the abuse of liquor sold at the Premises is constrained.

CONCLUSION

115. Considering together the found positive benefits and taking into account the factors which are likely to objectively constrain or minimise the extent of negative impacts arising from the operation of this business in this community, the Authority is satisfied that the overall social impact of granting this Application for a packaged liquor licence will not be detrimental to the well-being of the local or broader community provided that the conditions proposed by Police are imposed upon the licence.



Michel Brodie
Chief Executive

DATED 26 / 4 / 2015